

STATE OF NEW HAMPSHIRE
SUPREME COURT
ADVISORY COMMITTEE ON JUDICIAL ETHICS

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QUESTION PRESENTED:

Does the Code of Judicial Conduct (New Hampshire Supreme Court Rule 38) prohibit a judge from introducing a guest speaker at a public fund-raising event sponsored by a non-profit organization which benefits disadvantaged individuals?

FACTS PRESENTED:

The inquiring judge is a member of the advisory board of a New Hampshire non-profit organization which benefits disadvantaged individuals. A public fund-raising event is planned at which a well-known author will be speaking. Tickets to the event are available to the public at a nominal cost (\$5.00 and \$10.00). Prior to the speech, a reception/book-signing will be held, at which \$100.00 ticket-holders will have the opportunity to meet the author. The proceeds of the event will go to the organization to help accomplish its charitable work. The judge has been asked to introduce the author. Event announcements, fliers, etc. do not include any reference to the judge. In addition to an advisory board, of which the judge is a member, the organization has a board of directors, of which the judge is not a member. The judge does not give the organization any legal advice.

DISCUSSION AND APPLICATION OF CODE OF CONDUCT:

Applicable to this question is Canon 4 ("A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations"). The commentary to Canon 4A(3) points out, "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives." Consistent with the recognition of the value of a judge's community involvement, Canon 4C(3) provides, "A judge may serve as an officer, director, trustee or non-legal advisor...of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to [enumerated] limitations and the other requirements of this Code."

Two of the enumerated limitations set forth in Canon 4C(3) are relevant to the question presented. The first provides that a judge "may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities." Canon 4C(3)(b)(i)(emphasis added). The second provides that a judge "shall not use or permit the use of the prestige of judicial office for fund-raising...." Canon 4C(3)(b)(iv). The commentary to Canon 4C(3)(b) states that, "A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code."

It is clear, therefore, that the Code prohibits a judge from speaking at a fund-raiser for a charitable organization. One might then reasonably ask whether introducing a speaker is qualitatively different from "speaking" at the fund-raiser. It might well be argued that in light of the Preamble's statement that the Canons are "rules of reason," one could reasonably conclude that a simple introduction would not pressure contributions from attendees, and therefore would be permissible. After careful consideration, however, the committee concludes otherwise. Aside from the fact that introductions may themselves evolve into "speeches," the principles underlying the Code prohibitions are equally applicable to the most benign of introductions. Whether speaking or introducing a speaker, the judge is essentially allowing the prestige of judicial office to be used in connection with fund-raising. Such is prohibited by the Code. The committee notes that this construction of the Code is consistent with advisory opinions from other jurisdictions. See, e.g., N.Y. Advisory Committee on Judicial Ethics, Opinion 98-16 (1998) (finding it impermissible for a judge to introduce speakers and dignitaries at a fund-raiser for a local civic/religious organization); Illinois Judicial Ethics Committee, Opinion 96-3 (1996) (finding it impermissible for a judge to introduce the honoree or speaker at a law school fund-raiser).

ADVISORY OPINION ON THE QUESTION PRESENTED:

The Code of Judicial Conduct prohibits a judge from introducing a guest speaker at a public fund-raising event sponsored by a non-profit charitable organization.

THIS ADVISORY OPINION IS ISSUED BY UNANIMOUS CONCURRENCE OF ALL COMMITTEE MEMBERS.

Carol Ann Conboy, Chair

CAUTIONARY STATEMENT

This opinion is advisory only and not binding on the judicial conduct committee, which may, in its discretion, consider compliance with an advisory opinion by the requesting individual as a good faith effort to comply with the Code of Judicial Conduct. Rule 38-A(4)(c).